

APPEAL NO. 023204
FILED JANUARY 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 18, 2002. The hearing officer determined that (1) the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth, seventh, eighth, and ninth quarters; and (2) the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c). The claimant appeals these determinations on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

SIXTH, SEVENTH, EIGHTH, AND NINTH QUARTERS

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the sixth, seventh, eighth, and ninth quarters. Pursuant to Sections 408.142 and 408.143 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102), an employee continues to be entitled to SIBs after the first compensable quarter if the employee (1) has not returned to work or has earned less than 80 percent of his average weekly wage as a direct result of the impairment from the compensable injury, and (2) has in good faith sought employment commensurate with the employee's ability to work. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer found that the claimant did not satisfy the "direct result" criteria during any of the disputed SIBs quarters and did not satisfy the "good faith" criteria during the qualifying periods of the seventh through ninth SIBs quarters. In view of the evidence presented and the applicable law, we cannot conclude that the hearing officer's determination of nonentitlement to SIBs is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

LOSS OF ENTITLEMENT TO SIBs

The hearing officer did not err in determining that the claimant lost entitlement to SIBs. Section 408.146(c) provides that an employee who is not entitled to SIBs for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury. Given our affirmance of the hearing officer's determination of nonentitlement to sixth, seventh, eighth, and ninth quarter SIBs, we likewise affirm the determination that the claimant lost entitlement to SIBs under Section 408.146(c).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Roy L. Warren
Appeals Judge